

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

ADAM CHUNG-SHIAING WANG,
Defendant.

No. C-04-4520 SC
AMENDED ORDER
GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff United States of America ("the Government" or "Plaintiff") filed this action to revoke the naturalization of Defendant Adam Chung-Shiaing Wang ("Defendant"), alleging that his certificate of citizenship was illegally procured. The Government now moves for partial summary judgment as to Counts I and II. For the reasons contained herein, this Court hereby GRANTS Plaintiff's motion as to Counts I and II of the Complaint. Defendant's certificate of citizenship is hereby CANCELLED and the order admitting him to citizenship is REVOKED and SET ASIDE.

II. BACKGROUND

Because this is a motion for summary judgment, the Court will regard the evidence of Defendant, as the non-moving party, as

1 true. Therefore, the following is based on Defendant's
2 submissions to the Court.

3 The Immigration and Naturalization Service ("INS") approved
4 Defendant's application for citizenship on May 5, 1995. Answer at
5 2.¹ On his application, Defendant answered "No" to a written
6 question regarding whether he had ever been "arrested, cited,
7 charged, indicted, convicted, fined, or imprisoned" for a crime,
8 excluding traffic violations. Defendant's Memorandum in Support
9 of Opposition to Motion for Summary Judgment at 2 ("Def's Mem.").²
10 He orally informed an investigator that he had been fined for
11 theft from a video store. Id. at 2. In fact, Defendant was
12 convicted of grand theft in 1992 and sentenced to one year
13 probation and a \$250 fine. Answer at 2. In addition, Defendant
14 was arrested for petty theft in February 1994 for stealing \$300
15 from his employer and sentenced to 10 days in jail, served over 10
16 consecutive Sundays, and three years probation. Id. at 2.
17 Defendant was on probation when his application was approved. Id.
18 at 3.

19 According to Defendant, his INS examiner, Wendy Plane
20 ("Plane"), had noted his criminal offenses during the interview,
21 but did not correct Defendant's form. Def's Mem. at 2. Plane, in
22 a deposition, conceded that it was possible she simply forgot.

23
24 ¹ The INS has since merged into three Bureaus under the
25 Department of Homeland Security. The Court will use "INS" for
26 purposes of convenience and because it was the INS which first
approved Defendant's application.

27 ² Defendant's sister actually filled out the application and
checked the "No" box. See Def's Mem. at 2.

1 Def's Mem., Ex. 1 at 23.

2 The Government filed a complaint to revoke Defendant's
3 naturalization. In response to the Answer, the Government filed a
4 motion under Federal Rule of Civil Procedure 12(f) to strike
5 Defendant's affirmative defenses. The Court granted the motion as
6 to two of the defenses and denied the motion as to one, allowing
7 Defendant the opportunity to use the affirmative defense of
8 estoppel.

9 The Government brings this motion for partial summary
10 judgment on Counts I and II of the Complaint. In Count I, the
11 Government alleges that Defendant, because of his criminal
12 history, was not possessed of good character, and was therefore
13 ineligible for naturalization. In Count II, the Government
14 alleges that Defendant, because he was on parole when he applied
15 for citizenship, was ineligible to be naturalized. The Government
16 contends that because of these facts the Defendant's citizenship
17 was illegally procured.

18
19 **III. LEGAL STANDARD**

20 Summary judgment is appropriate only "if the pleadings,
21 depositions, answers to interrogatories, and admissions on file,
22 together with the affidavits, if any, show that there is no
23 genuine issue as to any material fact." Celotex Corp. v. Catrett,
24 477 U.S. 317, 322 (1986). A genuine issue of fact exists when the
25 non-moving party produces evidence on which a reasonable trier of
26 fact could find in its favor viewing the record as a whole in
27 light of the evidentiary burden the law places on that party.

1 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252-56 (1986).
2 Summary judgment is therefore appropriate against a party "who
3 fails to make a showing sufficient to establish the existence of
4 an element essential to the party's case, and on which that party
5 will bear the burden of proof at trial." Celotex, 477 U.S. at
6 322-23. The more implausible the claim or defense asserted by the
7 opposing party, the more persuasive its evidence must be to avoid
8 summary judgment, see Matsushita Electric Industrial Co. v. Zenith
9 Radio Corp., 475 U.S. 574, 587 (1986), but "[t]he evidence of the
10 non-moving party is to be believed, and all justifiable inferences
11 are to be drawn in its favor." Anderson, 477 U.S. at 255.

12 13 **IV. DISCUSSION**

14 Plaintiff contends that Defendant was ineligible to receive
15 citizenship because he was not of good moral character and was on
16 probation when he applied for citizenship. Defendant contends
17 that the Government is estopped from revoking his citizenship.
18 Specifically, Defendant contends that he "relied upon the
19 approval, and more than nine years elapsed when he first learned
20 that his citizenship must be revoked." Def's Mem. at 4.

21 The Constitution directly grants Congress legislative
22 authority over matters of naturalization. U.S. CONST. art. I,
23 § 8, cl. 4. The authority of the Federal Courts over these
24 matters is tightly tethered by congressional statutes. The United
25 States Supreme Court puts it thus:

26 An alien who seeks political rights as a member of this
27 Nation can rightfully obtain them only upon the terms and
28 conditions specified by Congress. Courts are without

1 authority to sanction changes or modifications; their duty is
2 rigidly to enforce the legislative will in respect of a
matter so vital to the public welfare.

3 United States v. Ginsberg, 243 U.S. 472, 474-475 (1917).

4 The Supreme Court, having said this, has also declared that
5 the "Government carries a heavy burden of proof in a proceeding to
6 divest a naturalized citizen of his citizenship." United States
7 v. Fedorenko, 449 U.S. 490, 505 (1981), citing Costello v. United
8 States, 365 U.S. 265, 269 (1961). "The evidence justifying
9 revocation of citizenship must be clear, unequivocal, and
10 convincing and not leave the issue in doubt." Id., citing
11 Schneiderman v. United States, 320 U.S. 118, 125 (1943).

12 "At the same time...there must be strict compliance with all
13 the congressionally imposed prerequisites to the acquisition of
14 citizenship. Failure to comply with any of these conditions
15 renders the certificate of citizenship 'illegally procured,' and
16 naturalization that is unlawfully procured can be set aside." Id.
17 at 506.

18
19 A. Count I

20 An applicant for citizenship must be a person of "good moral
21 character," as defined by statute. 8 U.S.C. §§ 1427(a) and
22 (f)(3). An applicant shall not be regarded as such a person if he
23 has been convicted, or admits to having committed, a "crime
24 involving moral turpitude." 8 U.S.C. § 1182(a)(2)(A)(i)(I).
25 Crimes of theft are presumed to involve moral turpitude. See
26 Gutierrez-Chavez v. INS, 8 F.3d 26, 26 (9th Cir. 1993).

27 Defendant concedes that he was convicted of petty theft and
28

1 grand theft. Answer at 2. Because this disqualifies him for
2 being a person good character, Defendant was ineligible for
3 citizenship when he applied for it.

4
5 B. Count II

6 Defendant concedes that his probation did not end until
7 February 1997 and was thus on probation on the date his
8 application was approved. Id. at 3.

9
10 "An application will not be approved until after the
11 probation, parole, or suspended sentence has been completed."
12 8 C.F.R. § 316.10(c)(1). According to this regulation, the INS
13 was without authority to grant citizenship to Defendant.

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16 C. Equitable Estoppel

17 The doctrine of equitable estoppel applies against the
18 government only if the government engages in "affirmative
19 misconduct going beyond mere negligence." Mukherjee v. INS, 793
20 F.2d 1006, 1008-1009 (9th Cir. 1986). Furthermore, "estoppel will
21 apply only where the government's wrongful act will cause a
22 serious injustice and the public's interest will not suffer undue
23 damage by the imposition of liability." Id.³

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25
26 ³ There are additional requirements for estoppel to apply.
27 The party to be estopped must have "made a knowing false
28 representation or concealment of material facts to a party ignorant
of the facts, with the intention that the other party should rely

1 Defendant concedes that Plane "did not give this interview
2 needed attention because she had to interview 23-25 persons every
3 day, a high caseload for her." Def's Mem. at 3. Defendant also,
4 rather incongruously, states that Plane's actions "suggest that
5 she was incompetent and grossly negligent." Id. at 10.

6
7 The Court rejects this defense. The Court finds that,
8 believing Defendant's evidence as true and drawing every favorable
9 inference in his favor, Plane's actions do not rise to the level
10 of affirmative misconduct. According to the facts the Court
11 considered along with Defendant's own assertions, Plane's act was
12 an oversight, possibly attributable to her having to interview
13 roughly 25 persons per day. Id. Also, taking Defendant's
14 evaluation of Plane's actions as true, gross negligence and
15 incompetence are not sufficient to support a finding of
16 affirmative misconduct, which requires that the Government "either
17 intentionally or recklessly mislead[] the claimant." Michigan
18 Express, Inc., v. United States, 374 F.3d 424, 427 (6th Cir.
19 2004).

20
21 Furthermore, the significance of the public interest cannot
22 be ignored. The question of on whom and how citizenship is
23 conferred is of the highest concern. The public has an interest
24 in admitting to citizenship only those persons who are possessed
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27 on it." Mukherjee, 793 F.2d at 1008, citing Jaa v. INS, 779 F.2d
28 569, 571 (9th Cir. 1986).

1 of good moral character. Congress, in whose hands the
2 Constitution has placed authority over this process, has seen fit
3 to serve the public's interest by excluding persons who have
4 unfitted themselves for citizenship by committing various crimes.
5 The INS is charged with the strict enforcement of congressional
6 procedures and requirements in this area. The Federal Courts,
7 likewise, must strictly enforce these requirements.
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9 The Court has evidence, as described above, that Defendant
10 inaccurately answered a crucial question on his application form.
11 Though he may have been truthful at his interview, his failure to
12 correctly and truthfully fill out his application form is a
13 serious error. Whatever the actions of the INS, the Court regards
14 this act as a failure to comply with congressionally imposed
15 prerequisites to the acquisition of citizenship, thus rendering
16 his certificate of citizenship illegally procured.
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18 A Federal Court, if it finds that citizenship was illegally
19 procured, will revoke and set aside the order admitting that
20 person to citizenship and cancel the certificate of citizenship.
21 8 U.S.C. § 1451(a).
22

23 The Court finds that, for the reasons listed above,
24 Defendant's citizenship was illegally procured and, accordingly,
25 orders that the order and certificate conferring citizenship be
26 rescinded.
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1 The Court further orders that JUDGMENT is entered requiring
2 Defendant to surrender his Certificate of Naturalization and any
3 copies thereof in his possession (and to make good faith efforts
4 to recover and then surrender any copies thereof that he knows are
5 in possession of others) to the Attorney General immediately; and
6 return any other indicia of United States citizenship, and any
7 copies thereof in his possession (and to make good faith efforts
8 to recover and then surrender any copies thereof that he knows are
9 in the possession of others), including, but not limited to,
10 United States passport, voter registration card, and other voting
11 documents.
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14 IT IS SO ORDERED.

15 Dated: October 20, 2005

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17 UNITED STATES DISTRICT JUDGE
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